

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BERNARD WAITHAKA, *et al.*,

Plaintiffs,

v.

AMAZON.COM INC. and AMAZON
LOGISTICS, INC.,

Defendant(s).

Consolidated Action

Case No. 2:19-cv-01320-JCC

JOINT STATUS REPORT

By Order dated June 9, 2023, the Court directed the Parties in this case and in *Rittman* (No. C16-1554-JCC) to file “within fourteen (14) days of the later-filed Ninth Circuit mandate in *Carmona* or *Miller* ... “a joint status report containing proposed case management schedules for their respective cases through class certification, with due consideration given to possible renewed motions from Defendants in each case to compel arbitration and/or to dismiss and Plaintiffs’ motions in each case for class certification.” *Rittmann* Dkt. 289 at 2-3. Later, the Court directed only the parties in *Rittmann*.to file a joint status report “within ten (10) days of the date on which the United States Supreme Court issues its disposition of *Carmona* and of *Miller*.” On April 22, 2024, the Supreme Court denied the petition for certiorari in both matters. The Ninth Circuit entered both mandates on the same day.

1 In response to the Court's Order, the Parties submit their respective positions below:

2 **Plaintiffs' Position:**

3 The stay should now be lifted, and the Court should proceed to rule on Plaintiff's Motion
4 for Class Certification (ECF No. 97) and Defendant's Renewed Motion to Compel arbitration
5 (ECF No. 134). Briefing on both of those motions had been complete for more than eighteen
6 months (since September 2022) at the time the stay was entered.

7 Defendants take the position that the Court struck all pending motions and that the Parties
8 should essentially start over again from scratch. Plaintiff instead requests that the Court reinstate
9 these fully-briefed motions and simply allow the Parties each file simultaneous briefs addressing
10 any new developments that would affect either pending motion (not to exceed ten (10) pages),
11 followed by a second brief responding to the other side's submission (not to exceed ten (10) pages),
12 at which point the Court can proceed to rule on the pending motions. This course of action would
13 be most efficient, rather than requiring the Parties to reproduce the lengthy briefing they have
14 already completed to date.

15 Furthermore, in the *Rittmann* matter, the Court already took up the question of the order in
16 which it should decide Class Certification and Defendants' Renewed Motion to Compel
17 Arbitration, and it ruled that it would consider Defendants' Motion to Compel arbitration
18 *concurrent with* Plaintiff's Motion for Class Certification. *See Rittmann*, Civ. A. No. 2:16-cv-
19 01554, ECF No. 237 at 2 ("Therefore, the motion for class certification and motion to compel
20 arbitration shall be considered in conjunction."). As such, the Court should not permit Amazon to
21 force a decision on its (frivolous) Renewed Motion to Compel arbitration before deciding the
22 Motion for Class Certification, which Plaintiff originally filed more than three years ago. *See* ECF
23 No. 97.

24 Significant discovery has already taken place in this case, including depositions of the
25 named plaintiff and Defendants' Rule 30(b)(6) witness and significant document discovery, and
26 there is no reason to delay a decision on Class Certification any further, particularly given the fact

1 that this case has now been pending for more than seven years.

2 **Defendants' (together "Amazon") Position:**

3 No motions are currently pending; on February 27, 2023, the Court ordered all pending
4 motions stricken and all case deadlines vacated. ECF No. 155. No discovery deadlines or trial
5 deadlines had been set as of that order.

6 Amazon proposes that its Renewed Motion to Compel Arbitration should be refiled and
7 decided prior to Plaintiffs' Motion for Class Certification because the Renewed Motion to Compel
8 Arbitration presents the threshold issue of whether this case can proceed before this Court. *See*
9 *e.g., Edwards v. Doordash, Inc.*, 888 F.3d 738, 743 (5th Cir. 2018) ("[A]rbitrability is a 'threshold
10 question' to be determined 'at the outset,' a holding consistent with the 'national policy favoring
11 arbitration.'"); *see also Rittmann* Dkt. 289 at 2-3 (directing parties to file "a joint status report
12 containing proposed case management schedules for their respective cases through class
13 certification, with due consideration given to possible renewed motions from Defendants in each
14 case to compel arbitration[.]").

15 A decision on the Renewed Motion to Compel Arbitration may render class certification
16 briefing moot, but if Plaintiff can proceed to class certification, then the briefing should be renewed
17 rather than "reinstated" as Plaintiff proposes. Amazon believes that the Parties should file renewed
18 briefing to address interim changes in law and fact given that three years have passed since the
19 Parties filed their original briefing and Plaintiff seeks to certify a class through the present.

20 Prior to the February 27, 2023 order, the Parties exchanged initial disclosures and some
21 written discovery, Amazon took the deposition of Plaintiff Waithaka, and Plaintiff took a 30(b)(6)
22 deposition of Amazon. Amazon anticipates that once the stay is lifted, the Parties will renew their
23 efforts to meet and confer on written discovery and continued depositions, including, but not
24 limited to, a 30(b)(6) deposition on topics not previously covered. Amazon also expects the Parties
25 to meet and confer on supplementation of their prior discovery pursuant to their obligations under
26 Rule 26(e), which may affect the arguments and evidence for the Renewed Motion to Compel

1 Arbitration and the Renewed Motion for Class Certification.

2 Amazon therefore proposes the following schedule:

3 1. Motion to Compel Arbitration:

4 a. Amazon will file a Motion to Compel Arbitration no later than June 3, 2024.

5 b. Plaintiff's Opposition will be due July 8, 2024.

6 c. The noting date and deadline for Amazon to reply will be July 19, 2024.

7 2. In the event that the Renewed Motion to Compel Arbitration is denied:

8 a. Plaintiff will file the Motion for Class Certification 30 days after an order
9 denying the Motion to Compel Arbitration.

10 b. Amazon's Opposition will be due 30 days after the filing of the Motion for
11 Class Certification.

12 c. The noting date and deadline for Plaintiff to reply will be 15 days after
13 Amazon files its Opposition.

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1 DATED: May 2, 2024

2 **MORGAN, LEWIS & BOCKIUS LLP**

3 By: s/ Andrew DeCarlow

4 Andrew DeCarlow, WSBA No. 54471
5 1301 Second Avenue, Suite 3000
6 Seattle, WA 98101
7 Telephone: (206) 274-6400
8 Fax: (206) 274-6401
9 Email: andrew.decarlow@morganlewis.com

10 Richard G. Rosenblatt (*Pro Hac Vice*)
11 James P. Walsh (*Pro Hac Vice*)
12 MORGAN, LEWIS & BOCKIUS LLP
13 502 Carnegie Center
14 Princeton, NJ 08540-6241
15 Telephone: (609) 919-6600
16 Fax: (609) 919-6701
17 Email: richard.rosenblatt@morganlewis.com
18 james.walsh@morganlewis.com

19 Michael E. Kenneally (*Pro Hac Vice*)
20 MORGAN, LEWIS & BOCKIUS LLP
21 1111 Pennsylvania Avenue, N.W.
22 Washington, DC 20004-2541
23 Telephone: (202) 739-3000
24 Fax: (202) 739-3001
25 Email: michael.kenneally@morganlewis.com

26 *Attorneys for Defendants Amazon.com, Inc.
and Amazon Logistics, Inc.*

FRANK FREED SUBIT & THOMAS LLP

By: s/ Michael C. Subit

Michael C. Subit, WSBA No. 29189
705 Second Avenue, Suite 1200
Seattle, Washington 98104-1729
Telephone: (206) 682-6711
Fax: (206) 682-0401
Email: msubit@frankfreed.com

Shannon Liss-Riordan (*Pro Hac Vice*)
Harold L. Lichten (*Pro Hac Vice*)
Adelaide Pagano (*Pro Hac Vice*)
LICHTEN & LISS-RIORDAN, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
Telephone: (617) 994-5800
Fax: (617) 994-5801
Email: sliss@llrlaw.com
Email: hlichten@llrlaw.com
Email: apagano@llrlaw.com

Attorneys for Plaintiff Waithaka